

MTC 6788 (39-21(53155A))
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Xiaodong C. Xu
Serial No. 09/988,353
Filed November 19, 2001
Confirmation No. 8762
For PESTICIDE COMPOSITIONS CONTAINING OXALIC ACID
Examiner S. Mark Clardy

Art Unit 1616

July 3, 2003

RESPONSE TO RESTRICTION REQUIREMENT

TO THE COMMISSIONER FOR PATENTS,

SIR:

In response to the restriction requirement made in the action of June 3, 2003, Applicants elect the invention of Group I (Claims 1, 7-10, 33, 40-42, 99, 106, 107, 125-127, 131-133, 137-139 and 148) identified by the Examiner, with traverse.

According to MPEP §803, "[i]f the search and examination of an entire application can be made **without serious burden**, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."¹

In this case, restriction is not proper. Any search of the prior art and examination involving Group III claims and the elected glyphosate species will necessarily co-extend with the search and examination of the claims of Groups I and II. Thus, as the examination of the entire application may be made without serious burden, the claims of Groups I, II, and III should be examined together in accordance with MPEP § 803.

In the alternative, and at the very least, the claims of Groups I and III should be rejoined and examined together since the search for the elected Group I will necessarily include the same search as for Group III.

In response to the species election requirement, Applicants elect: glyphosate or a salt or ester thereof as the active agent; surfactants described in the specification by formula (36) at page 23, paragraphs 165 and 166; and oxalic acid. Claims 1, 12, 17, 26, 33, 46, 51, 60, 67, 70, 75, 80, 84, 86, 89, 94, 99, 109, 113, 116, 118, 121, 123, 125, 128, 131, 134, 137, 140, 143 and 148, as well as claims 2-11, 13-16, 18-25, 27-32, 34-

¹ MPEP § 803 (emphasis added).


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45, 47-50, 52-59, 61-66, 68-69, 71-74, 76-79, 81-83, 85, 87-88, 90-93, 95-98, 100-108, 110-112, 114-115, 117, 119-120, 122, 124, 126-127, 129-130, 132-133, 135-136, 138-139, 141-142 and 144-147, respectively, that depend therefrom, read on the elected species.

According to MPEP §809.02(c), an Examiner's action subsequent to an election of species should include a complete action on the merits of all claims readable on the elected species and according to MPEP §809.02(e), whenever a generic claim is found to be allowable in substance, action on the species claims shall thereupon be given as if the generic claim were allowed. Thus, if it is determined that the elected species is patentable, it is incumbent upon the Office to search additional species that fall within any allowable generic claims.

Applicants reserve the right to file divisional applications directed to the non-elected subject matter.

Respectfully submitted,



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Applicant's Name: Xiaodong C. Xu et al.
Serial No. (Control No.): 09/988,353 Examiner: S. Mark Clardy
Filing Date: November 19, 2001 Art Unit: 1616
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